

INITIAL STATEMENT OF REASONS

STATE SCHOOL DEFERRED MAINTENANCE PROGRAM REGULATIONS

Sections 1866 through 1866.14.

Specific Purpose of the Regulations

To provide State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for the major repair or replacement of existing school building components.

Need for the Regulations

It was necessary to align the State School Deferred Maintenance Program (DMP) regulations with provisions contained in Assembly Bill (AB) 97, Chapter 47, Statutes of 2013 and Senate Bill (SB) 971, Chapter 923, Statutes of 2014, in order to be in compliance with the statutes.

SCHOOL FACILITY PROGRAM REGULATIONS

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to the School Facility Program (SFP) regulations.

Need for the Regulation

It was necessary to change the revision date of the Form SAB 50-04, *Application For Funding*, in order to make the Form consistent with the chaptered legislation (AB 97 and SB 971).

Section 1859.102. Maintenance Plan.

Specific Purpose of the Regulation

To delete language that is no longer applicable based on the chaptered legislation.

Need for the Regulation

It was necessary to delete language and maintain consistency due to provisions in the chaptered legislation.

SCHOOL FACILITY PROGRAM FORM

Application For Funding, Form SAB 50-04 (Revised 04/15).

Specific Purpose of the Form

To delete language that is no longer applicable based on implementation of the chaptered legislation.

Need for the Form

Page 9, first column, second bullet: It was necessary to delete this certification in order to be in compliance with the chaptered legislation.

Anticipated Benefits and Economic Impact of the Proposed Regulations

School district governing boards will have complete local control over the funds and will be responsible for ensuring compliance with the laws. School districts also benefit from the proposed regulatory amendments because with complete oversight of the funds, they will have the decision-making authority and responsibility to decide how much to spend on the facilities in order to maintain those facilities.

There is a public health and safety impact assigned to these regulations. School districts will be responsible for the major repair or replacement of existing school building components, including but not limited to plumbing, heating, air conditioning, electrical systems, roofing, floor systems, and asbestos abatement.

The proposed regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these regulatory amendments will have a positive impact on public health and safety at K-12 public schools. School districts will have to make decisions to expend funds on their facilities in order to continue to safely house students, and to ensure compliance with the laws.

The proposed regulatory amendments align the DMP and SFP regulations with provisions contained in AB 97 and SB 971. The chaptered legislation repealed sections of the Education Code pertaining to the administration of the DMP and the allocation of funds from state sources. The chaptered legislation provides the following changes to the DMP regulations:

- Removes the Authority for the State Allocation Board to allocate or approve DMP funding on or after January 1, 2015.
- Provides that school districts may continue to maintain a maintenance fund and that the governing board of each school district shall have complete control of the funds and interest earned on those funds once deposited into a deferred maintenance fund.
- Provides that every public and private school maintaining any combination of classes from kindergarten to grade 12, inclusive, maintain clean restrooms to be fully operational and stocked at all times and that the school shall keep all restrooms open during school hours when pupils are not in class, and keep a sufficient number of restrooms open during school hours when pupils are in class.

The Economic Impact will be determined by school districts. With the shift of funding responsibility from the state to local control, it will be up to school districts to make the determination of how much to spend and on what facilities that will determine impacts to businesses and jobs.

The proposed regulations should have a positive impact on the creation of jobs, the creation of new businesses, and the expansion of businesses in California as school districts will have complete control of the decision-making responsibilities and the expenditure of funds. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

DOCUMENTS RELIED UPON AND STATEMENTS REGARDING THE RULEMAKING

Technical Documents Relied Upon

The State Allocation Board's Action item, dated April 15, 2015, entitled "Implementation of Assembly Bill 97 and Senate Bill 971 Proposed Regulation Changes."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations will not have a negative impact on small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the proposed regulations will not negatively impact businesses/small businesses because they are not required to directly comply with or enforce the regulations, nor will they be disadvantaged by the regulations. In fact, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of businesses/small businesses in these areas.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS "Implementation of Assembly Bill 97 and Senate Bill 971 Proposed Regulation Changes"

Proposed State Allocation Board Regulations

The State Allocation Board (SAB), at its April 15, 2015 meeting, adopted proposed regulatory amendments to the State School Deferred Maintenance Program (DMP) and School Facility Program (SFP) regulations. Assembly Bill (AB) 97, Chapter 47, Statutes of 2013 and Senate Bill 971, Chapter 923, Statutes of 2014 set forth provisions that require alignment in the DMP and SFP regulations.

Background and Problem Being Resolved

The proposed regulatory amendments align the DMP with the chaptered legislation which implemented the following changes:

- Removes the statutory Authority for the SAB to allocate or approve DMP funding on or after January 1, 2015.
- Provides that school districts may continue to maintain a maintenance fund and that the governing board of each school district shall have complete control of the funds and interest earned on those funds once deposited into a deferred maintenance fund.
- Provides that every public and private school maintaining any combination of classes from kindergarten to grade 12, inclusive, maintain clean restrooms to be fully operational and stocked at all times and that the school shall keep all restrooms open during school hours when pupils are not in class, and keep a sufficient number of restrooms open during school hours when pupils are in class.

The proposed regulatory amendments to the SFP regulations remove language related to the DMP and are consistent with the provisions contained in the chaptered legislation.

Description of Regulations to Implement Law

The DMP provided State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components. Education Code Section 17582 listed the component systems eligible to receive deferred maintenance funding. This included plumbing, heating, air conditioning, electrical systems, roofing, interior/exterior painting, floor systems, and asbestos abatement. Education Code Section 17587 authorized funds for extreme hardship projects if the work must be completed within one year. The SAB adopted regulations to implement the DMP, which were approved by the Office of Administration Law (OAL) and filed with the Secretary of State on January 13, 2003.

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the SFP. The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the OAL and filed with the Secretary of State on October 8, 1999.

The proposed regulatory amendments align the DMP and SFP regulations with provisions contained in AB 97 and SB 971. The chaptered legislation repealed sections of the Education Code pertaining to the administration of the DMP and the allocation of funds from state sources.

The proposed regulatory amendments are summarized as follows:

DMP Regulations

Existing Regulation Section 1866 sets forth a set of defined words and terms used exclusively for the DMP regulations. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.1 outlines the prerequisites and defines the criteria to receiving an apportionment under the DMP, and defines the entities that may apply for DMP funding. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.2 provides direction to school districts seeking an apportionment under the DMP, and establishes the application process for receiving a DMP basic grant. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.3 specifies the process for filing and reviewing DMP applications, and establishes the application process for receiving a DMP Extreme Hardship Grant. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4 establishes the necessity for a school district to file a five-year plan of maintenance needs, establishes the purpose for which the Five Year Plan, Form SAB 40-20, is filed, and explains application acceptance guidelines. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.1 provides specific criteria for what types of maintenance projects may be included on a five-year plan and explains the uses of the basic grant apportionment. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.2 provides for the calculation of the annual basic grant apportionment to school districts, and defines a prorated basic grant apportionment. This Section also requires the SAB to consider, in advance of the annual basic grant apportionment, any district's unresolved complaints of failing to maintain school restroom facilities that are clean, operational, and stocked with toilet paper, soap, and paper towels or functional hand dryers. Districts that do not correct violations within a specified period of time shall be deemed ineligible for the basic grant and the funds may be distributed to other eligible districts. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.3 defines the type of revenue a district may utilize in order to deposit its maintenance matching share contribution. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.4 provides a mechanism for utilizing funds deposited by unmatched by the State. It explains how a district can obtain the use of these deposited funds for the next fiscal year. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.6 specifies to County Superintendents of Schools the timeframe for the release of State funds for maintenance purposes, and the process if the timeframe is not met. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5 allows a school district to apply for extreme hardship funding for multiple critical projects, and provide eligibility criteria for districts to obtain extreme hardship grants. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.1 explains what documents are required for submittal in order for the Office of Public School Construction (OPSC) to accept Extreme Hardship Grant applications. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.2 explains how the Extreme Hardship Grant is determined for the first critical hardship project and multiple critical hardship projects. The proposed

regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.3 assigns priorities to critical hardship projects when funding is insufficient to fully fund all critical hardship requests. This Section 1) redefines what constitutes a priority one critical hardship project; 2) specifies the necessary language to be included in a district's governing board resolution when requesting priority one status; and 3) incorporates a process for projects placed and funded from the unfunded list. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.4 sets forth the process for reimbursement of expenditures and requires OPSC approval of the project prior to incurring construction costs. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.5 explains the uses of the Extreme Hardship Grant apportionment. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.6 specifies the conditions in which school districts may receive an increase in funding for ongoing project costs. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.7 provides direction to school districts regarding the release of State funds. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.8 establishes the criteria for ensuring timely project completion or substantial progress on the project for districts that have received extreme hardship grant apportionments. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.9 specifies that an exemption will be provided when determining a district's contribution if the removal of an underground toxic tank cannot be funded by any other source. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.7 specifies the role of a district's governing board once funds have been apportioned and deposited in the deferred maintenance fund of the district. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.8 specifies that expenditures shall be subject to competitive bidding. This Section further clarifies that the expenditures made by a district must be in compliance with the Public Contract Code, and provide specificity with regard to awarding emergency contracts. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.9 provides direction to school districts that have received funding and specifies a timeframe to submit an expenditure report after funds have been released. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.9.1 provides for an expenditure audit process and specifies the timeframe when the audit will commence and be completed. In addition, districts are put on notice to maintain all supporting documentation pertaining to all costs associated with the extreme hardship grant apportionment expenditures. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.10 sets forth the limitation of the State's responsibility. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.12 explains the conditions of how earned interest on DMP grant funds will be treated. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.13 stipulates that work listed on the *Five Year Plan* that has been submitted and funded under the SFP or the Federal Renovation Program shall be removed from said plan and the district shall submit a revised *Five Year Plan*. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.14 specifies that funding applications may not be amended to increase the scope of a project. This concept is current practice under the SFP and ensures equity to all project applications submitted or not yet filed and does not disadvantage projects on the DMP workload list. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Form SAB 40-20, *Five Year Plan*, (which is incorporated by reference) is used as a summary of proposed deferred maintenance projects the applicant district plans on completing annually over the next five fiscal years using the basic grant. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-21, *Certification of Deposits*, (which is incorporated by reference) is required to be signed and submitted by the County Superintendents of Schools certifying that a school district has placed on deposit in its district deferred maintenance fund the funding required by law. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-22, *Extreme Hardship Funding Application*, (which is incorporated by reference) is used by school districts requesting DMP Extreme Hardship Grant funding for a critical project listed on the Form SAB 40-20 that meets certain criteria. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-23, *Fund Release Authorization*, (which is incorporated by reference) is used to release the Extreme Hardship Grant amount, apportioned by the SAB, to the appropriate county treasury after the district has complied with the requirements of this Form. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-24, *Expenditure Report*, (which is incorporated by reference) is used by school districts to provide a detailed listing of the expenditures for the project. The proposed

regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

SFP Regulations

Existing Regulation Section 1859.2 defines words and terms used exclusively for the SFP regulations. The proposed regulatory amendment changes the revision date of the Form SAB 50-04, *Application For Funding*, (which is incorporated by reference).

Existing Regulation Section 1859.102 provides 1) a mechanism for districts to certify that they have developed a restricted on-going and major maintenance plan and, 2) provides direction to districts relative to the certification requirement that their maintenance plan has been updated and public approved. The proposed regulatory amendments remove language that is consistent with the provisions of the chaptered legislation.

Existing Form SAB 50-04, *Application For Funding*, (which is incorporated by reference) is used when a district is seeking funding for a new construction or modernization project. The proposed regulatory amendments remove certification language that is consistent with the provisions of the chaptered legislation.

Anticipated Benefits of the Proposed Regulations

School district governing boards will have complete local control over the funds and will be responsible for ensuring compliance with the laws. School districts also benefit from the proposed regulatory amendments because with complete oversight of the funds, they will have the decision-making authority and responsibility to decide how much to spend on the facilities in order to maintain those facilities.

There is a public health and safety impact assigned to these regulations. School districts will be responsible for the major repair or replacement of existing school building components, including but not limited to plumbing, heating, air conditioning, electrical systems, roofing, floor systems, and asbestos abatement.

The proposed regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these regulatory amendments will have a positive impact on public health and safety at K-12 public schools. School districts will have to make decisions to expend funds on their facilities in order to continue to safely house students, and to ensure compliance with the laws.

Statutory Authority and Implementation

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the

Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Impact to California Businesses and Jobs

Since the State of California will no longer provide funding specifically for deferred maintenance purposes, based on the proposed regulatory amendments, school district governing boards will have complete local control over the funds and will be responsible for ensuring compliance with the laws. School districts will benefit from the proposed regulatory amendments because with complete oversight of the funds, they will have the decision-making authority and responsibility to decide how much to spend on the facilities in order to maintain those facilities. With the shift of funding responsibility from the state to local control, it will be up to school districts to make the determination of how much to spend and on what facilities that will determine impacts to businesses and jobs.

Therefore, the proposed regulations should have a positive impact on the creation of jobs, the creation of new businesses, and the expansion of businesses in California as school districts will have complete control of the decision-making responsibilities and the expenditure of funds. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- There is a public health and safety impact assigned to these regulations. School districts will be responsible for the major repair or replacement of existing school building components, including but not limited to plumbing, heating, air conditioning, electrical systems, roofing, floor systems, and asbestos abatement. With the shift of funding responsibility from the state to local control, it will be up to school districts to make the determination of how much to spend and to prioritize health and safety projects in order to maintain their facilities for housing staff and students.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although the proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulations.